

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

RICHARD WILCOXON,

Plaintiff,

V.

RED CLAY CONSOLIDATED
SCHOOL DISTRICT BOARD OF
EDUCATION, and JANAY FREEBERRY,

Defendants.

C.A. No.05-524 (SLR)

JURY TRIAL DEMANDED

**APPENDIX TO PLAINTIFF'S ANSWERING BRIEF IN RESPONSE TO
DEFENDANT'S OPENING BRIEF IN SUPPORT OF SUMMARY JUDGMENT**

Timothy J. Wilson, Esquire (DE #4323)
MARGOLIS EDELSTEIN
1509 Gilpin Avenue
Wilmington, DE 19806
(302) 777-4680
Attorney for Plaintiff

Dated: August 2, 2006

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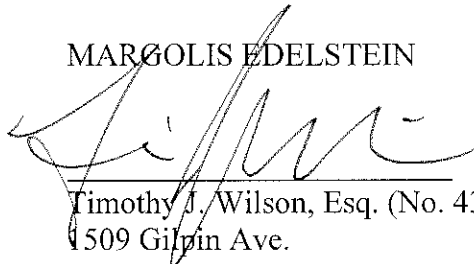
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CERTIFICATE OF SERVICE

I, Timothy J. Wilson, Esq., hereby certify that on August 2, 2006, I electronically filed a true and correct copy of the foregoing *Appendix to Plaintiff's Answering Brief in Response to Defendant's Opening Brief in Support of Summary Judgment* with the Clerk of the Court using CM/ECF, which will send notification of such to the following counsel of record, and further that I caused a copy of same to be delivered to the following counsel of record:

Barry M. Willoughby, Esq.
Michael P. Stafford, Esq.
The Brandywine Building
1000 West Street, 17th Floor
P.O. Box 391
Wilmington, DE 19899-0391

MARGOLIS EDELSTEIN

A handwritten signature in black ink, appearing to read 'Tim Wilson', is written over a horizontal line.

Timothy J. Wilson, Esq. (No. 4323)
1509 Gilpin Ave.
Wilmington, DE 19806
(302) 777-4680 – Telephone
(302) 777-4682 – Facsimile
twilson@margolisedelstein.com – Email
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RICHARD WILCOXON,)
)
Plaintiff,)
) Civil Action
v.) No. 05-524-SLR
)
RED CLAY CONSOLIDATED SCHOOL)
DISTRICT BOARD OF EDUCATION,)
and JANAY FREEBERY,)
)
Defendants.)

Deposition of RICHARD WILCOXON taken pursuant to notice at the law offices of Young, Conaway, Stargatt & Taylor, 1000 West Street, Wilmington, Delaware, beginning at 9:05 a.m. on Thursday, May 4, 2006, before Eleanor J. Schwandt, Registered Merit Reporter and Notary Public.

APPEARANCES:

TIMOTHY J. WILSON, ESQ.
MARGOLIS EDELSTEIN
1509 Gilpin Avenue
Wilmington, Delaware 19801
for the Plaintiff

BARRY M. WILLOUGHBY, ESQ.
YOUNG, CONAWAY, STARGATT & TAYLOR
1000 West Street - 17th Floor
Wilmington, Delaware 19801
for the Defendants

ALSO PRESENT:

DEBORAH COLES, Paralegal
CHRISTINE SMITH
DIANE DUNMON
JANAY FREEBERY

WILCOX & FETZER
1330 King Street - Wilmington, Delaware 19801
(302) 655-0477

B-0001



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COPY

1 RICHARD WILCOXON,
2 the witness herein, having first been
3 duly sworn on oath, was examined and
4 testified as follows:

5 EXAMINATION

6 BY MR. WILLOUGHBY:

7 Q. Good morning.

8 A. Good morning.

9 Q. My name is Barry Willoughby. I represent the
10 defendants in this lawsuit you filed, Red Clay School
11 District and Janay Freebery, who is here today. I will
12 be taking your deposition today. I'll be asking you a
13 series of questions. You will be responding to those
14 questions. If you don't hear or understand a question,
15 tell me and I'll either repeat it or rephrase it, okay?

16 A. All right.

17 Q. You understand you are under oath?

18 A. Yes.

19 Q. And you know lying under oath is perjury?

20 A. Yes.

21 Q. And do you know Janet Basara?

22 A. Yes.

23 Q. Do you know Frank Rumford?

24 A. Yes.



Richard Wilcoxon

3

1 Q. Do you know Janay Freebery?

2 A. Yes.

3 Q. Do you know Bruce Hammond?

4 A. Hammond?

5 Q. Yes. Hannah?

6 A. Hannah, yes.

7 Q. Do you know Rebecca Perse?

8 A. Yes.

9 Q. Do you know Sean Furilla?

10 A. Yes.

11 Q. Do you know Cindy Falgowski?

12 A. Yes.

13 Q. So you are personally acquainted with all those
14 people?

15 A. Yes.

16 Q. And you've had conversations with them at various
17 times?

18 A. Yes.

19 Q. And do you know who Signe Wilcoxon is?

20 A. Yes.

21 Q. Who is that?

22 A. My ex-wife.

23 Q. When was the last time you had a conversation
24 with any of those people?



Richard Wilcoxon

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1 A. I talked to my ex-wife to fill out your paperwork
2 maybe a month or two ago, to get some tax information.

3 Q. And what about the other people?

4 A. I saw Sean Furilla briefly at the YMCA working
5 out probably about same time, a couple months ago. And I
6 haven't seen the others in two years, two and a half
7 years, two years.

8 Q. Have you spoken with any of them about this case
9 since you filed the lawsuit?

10 A. I spoke, told my ex-wife why I needed the tax
11 documents you were requesting for this case.

12 Q. Other than that?

13 A. No.

14 Q. Have you spoken with any others since you filed
15 the lawsuit?

16 A. No.

17 Q. As you know, everything is being taken down by
18 the court reporter.

19 A. Mm-hmm.

20 Q. So you have got to give audible answers and you
21 have got to wait for me to finish the question before you
22 give a response. Okay?

23 A. Okay.

24 Q. And if you need a break, let me know.



Richard Wilcoxon

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1 A. Okay.

2 Q. What did you do to prepare for the deposition?

3 A. I met with Mr. Wilson yesterday afternoon. I
4 reviewed the complaint. I looked over one of the
5 observations. And I listened to one of the audio tapes.

6 Q. And what kind of audio tape is this?

7 A. This is an audio tape of some of the meetings I
8 had.

9 Q. You taped meetings?

10 A. Yes, I did.

11 MR. WILLOUGHBY: And has that been produced?

12 MR. WILSON: In our responses we said that
13 the audio tapes are available for your copying if you
14 want them.

15 MR. WILLOUGHBY: Well, we request they be
16 produced immediately.

17 BY MR. WILLOUGHBY:

18 Q. When did you start doing audio tapes of meetings?

19 A. On, I guess first day was December 17th of 2003,
20 I guess it was. I'm trying to think which year it was.
21 After documentation was found on the 15th, the 16th I met
22 with Jan Basara, and I was uncomfortable with how the
23 meeting went, so I felt very exposed, and I felt like
24 this whole thing was going to be turned around on to me.



1 Q. You thought your job was in jeopardy?

2 A. I was concerned that that could be the direction
3 it went, yes.

4 Q. All right. So you started making audio tapes at
5 this point?

6 A. Yes.

7 Q. Did you inform any of the people that you were
8 taping, that you were making audio tapes?

9 A. No, I did not.

10 Q. So you did that secretly?

11 A. Yes.

12 Q. At that point were you represented by a lawyer?

13 A. No, I was not.

14 Q. When did you first contact a lawyer?

15 A. I first talked to Jeff Taschner of DSEA that
16 March, I guess it was.

17 Q. March of 2004?

18 A. Was it two -- my last year teaching I guess, 2000
19 -- yes, 2004.

20 Q. Was he representing you individually or
21 representing the organization?

22 A. I don't understand.

23 Q. Mr. Taschner, was he representing you
24 individually or was he representing DSEA?



Richard Wilcoxon

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1 A. I was talking to him about my case as an
2 individual. I don't know how you categorize that, if he
3 was representing me or the union. I don't know how to
4 answer that question.

5 Q. You started telling me that you began the audio
6 taping on December 17 of 2003?

7 A. Yes.

8 Q. What other meetings did you audio tape?

9 A. Most of my conversation with Miss Basara.

10 Q. Since, from that time on?

11 A. Yes.

12 Q. And you didn't advise her that you were audio
13 taping any of those conversations, correct?

14 A. No, I did not.

15 Q. You did not?

16 A. No, I did not.

17 Q. Why didn't you tell her?

18 A. At that point it was more for my comfort, and I
19 just didn't see, feel a strong need to.

20 Q. Strong need to tell her?

21 A. Yes.

22 Q. You don't think she might want to know?

23 A. I don't know how she would feel.

24 Q. How would you feel if somebody was taping you and



Richard Wilcoxon

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1 you didn't know it?

2 MR. WILSON: Object to the form.

3 A. I couldn't really answer that. If I have been
4 taped and I still don't know it, I don't know how to
5 answer that.

6 Q. Well, if you were taped and you found out about
7 it later on, that it was done without your knowledge?

8 MR. WILSON: Object to the form.

9 A. I wouldn't -- I don't think it would bother me,
10 but I don't know. I don't know how to put myself in that
11 situation. I don't think it would bother me.

12 Q. You don't think it would bother you to be
13 secretly taped?

14 A. No.

15 Q. Would it bother you if somebody were keeping a
16 record on you of what your comings and goings were from
17 school? Would that bother you?

18 A. No.

19 MR. WILSON: Object to the form.

20 Q. So you would be all right with that too?

21 A. Yes.

22 Q. If they were doing that secretly and you worked
23 with them?

24 MR. WILSON: Objection.



Richard Wilcoxon

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1 A. Still not bother me.

2 Q. Wouldn't bother you. It would be fine with you?

3 A. Yes.

4 Q. Would you think that doing any of those things,
5 taping people secretly, keeping notes secretly, might be
6 considered disloyal by the people that you were secretly
7 taping and keeping notes on?

8 A. It might be.

9 Q. All right. Do you remember the dates of the
10 other audio tapes that you have?

11 A. Not the exact day. I know that I taped the
12 meeting when Janet Basara gave me the letters, the three
13 letters to put in my file. I believe it was January, I
14 want to guess it is the 22nd, but I'm not sure if that's
15 the exact day.

16 Q. That's after you got back from Hawaii?

17 A. Yes.

18 Q. Now, how many total tapes do you have?

19 A. I believe it is four.

20 Q. Four. And is it more than four conversations or
21 was it one conversation per tape?

22 A. No, it is more than four conversations.

23 Q. So you just took one, is it a cassette tape?

24 A. Yes.



Richard Wilcoxon

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1 Q. And you just kept using that over and over again?

2 A. No. I had multiple cassette tapes.

3 Q. But did you just use the tape until you ran it
4 out and then take another cassette tape?

5 A. Yes, yes, that's correct.

6 Q. Have you erased any of those conversations?

7 A. No.

8 Q. Have you had those conversations transcribed?

9 A. No, I have not.

10 Q. And they are in your lawyer's possession now?

11 A. Yes.

12 Q. Which tape did you listen to when you were
13 preparing for the deposition?

14 A. I listened to the conversations of December 17th.

15 Q. Any others?

16 A. No, I did not.

17 Q. And was that how you remembered it?

18 A. Yes.

19 Q. What do you remember hearing on the tape when you
20 listened to it in preparation?

21 A. There is multiple conversations on the tape.

22 Q. I want you to walk me through what your
23 recollection is of what everybody said.

24 A. Each conversation?



Richard Wilcoxon

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1 Q. Yes.

2 A. That morning -- on the first conversation was
3 that morning. I knocked on the door and asked Jan Basara
4 if I could have the log back.

5 Q. That was the log you were keeping on Janay?

6 A. Yes. She responded, "Yes, I'll get it to you
7 later."

8 Then next meeting was also that morning.
9 Miss Basara called me into her office and wanted to talk
10 to me about all the ways Miss Freebery could find out
11 that Miss Filer was the one who advised me to keep the
12 log. The day before Miss Filer and I had approached Mr.
13 Rumford, because Miss Basara had left, and Miss Filer
14 made very clear that if Miss Freebery found out that she
15 was the one who gave me the advice that she would file a
16 complaint with Mr. Orga because her name should not come
17 out.

18 Q. Wait a second. Ms. Filer didn't want her name to
19 come out?

20 A. Yes, to Miss Freebery.

21 Q. And Ms. Filer gave you the advice to start
22 keeping a log on Ms. Freebery?

23 A. Yes.

24 Q. And she did that at a bar after work?



1 A. Yes.

2 Q. Go ahead. Tell me what you remember about the
3 conversation.

4 A. The next one, Miss Basara was telling me the ways
5 Miss Filer could find out about the -- I'm sorry -- Miss
6 Freebery could find out that Miss Filer's name was the
7 person who gave it to me, and she was stating that people
8 could have seen her go into the cafeteria and pull Mr.
9 Rumford out, or saw myself and Miss Filer talking to Mr.
10 Rumford, talking to Mr. Rumford outside the cafeteria,
11 she could find out that way.

12 In that conversation I asked Miss Basara I
13 said, "I may be overreacting, I may be reading too much
14 into this, but both you and Mr. Rumford have come to me
15 and said we need to have a meeting later that day to see
16 how Miss Freebery and I could work together for the rest
17 of this year. You both have stated the rest of this
18 year. Maybe I'm reading too much into it, but why do you
19 say it that way?"

20 And her response was, "Well, you are not
21 tenured, are you?"

22 Q. So at that point you had the belief that she was
23 going to not renew your employment?

24 A. Yes.



1 Q. Go ahead.

2 A. And the other conversation I listened to was
3 after school that day, after the meeting where Miss
4 Freebery, Mr. Rumford and Miss Basara and I all met. I
5 went back and talked to Mr. Rumford and Miss Basara and
6 let them know that I felt very uncomfortable. I think
7 the words actually I used was I felt sick to my stomach
8 after Miss Freebery's accusation that I made
9 inappropriate comments to her, that I was very
10 uncomfortable with that.

11 And Miss Basara said that I was not in
12 trouble, none of this was going down in writing. Mr.
13 Rumford also indicated that he didn't think Miss Freebery
14 was uncomfortable with anything I said until a log was
15 found, in that conversation. Those are the conversations
16 I listened to.

17 Q. What was the next conversation you listened to?

18 A. Those were the three I listened -- those were the
19 three conversations I listened to to prepare for this.

20 Q. Did you tape record the conversation when Ms.
21 Freebery was present with Mr. Rumford and Ms. Basara?

22 A. Yes, I did.

23 Q. And what is your recollection of that
24 conversation?



Richard Wilcoxon

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1 A. My recollection is in that meeting Miss Freebery
2 asked me a number of times to tell her who gave me the
3 advice to keep the log. I declined to give that advice
4 or to tell her who gave me that advice.

5 I also explained that the log was really
6 just, was to protect me, because I had heard Miss
7 Freebery had said that I was difficult to work with, and
8 I was -- and also protect me in case there was any
9 problems with the kids, if the kids got hurt when she was
10 not in the class, present in the class, I felt that that
11 log would be protection for me as well in those cases.

12 After the fourth time of Miss Freebery
13 asking me who gave me the advice is when she made the
14 statement I made inappropriate comments to her and she
15 wanted to make me aware of that in front of witnesses,
16 and if it continued she would file a complaint of sexual
17 harassment.

18 Q. So she said you had made inappropriate remarks?

19 A. Yes.

20 Q. Some of a sexual nature?

21 A. Yes.

22 Q. And if it continued she would file charges?

23 A. Yes.

24 Q. So she didn't say she was filing charges right



Richard Wilcoxon

15

1 then?

2 A. No, she did not.

3 Q. What did you say when she said that to you?

4 A. I was stunned. At first I didn't say anything.

5 Miss Basara said, "I'm sorry that you said
6 that, Janay. I felt we were making progress in this
7 meeting."

8 And then I made a statement, "I wish you
9 would have told me if there was something I said that
10 made you uncomfortable."

11 Q. Did you say in words or substance that she had
12 opened the door to your comments?

13 A. No, I did not.

14 Q. Did you say that in any conversation?

15 A. No, I did not.

16 Q. Did you ever say that you were just kidding --

17 A. No.

18 Q. -- at any point?

19 A. No.

20 Q. Are you saying you never made any inappropriate
21 remarks to her?

22 A. No, I did not make any inappropriate remarks to
23 her.

24 Q. At any point?



Richard Wilcoxon

16

1 A. No.

2 Q. Do you remember that there was a Christmas party
3 at the school in December of 2003?

4 A. Christmas party was at Miss Freebery's house.

5 Q. That was afterwards. Was there a function at
6 school that day?

7 A. There could possibly be. I don't know.

8 Q. Did you get a poinsettia at some point during a
9 function at school over the holidays that year?

10 A. I don't think so, but possibly. I don't know.
11 We are talking about three years ago. I don't know.

12 Q. You don't recall getting that?

13 A. No, I do not.

14 Q. Do you recall saying in words or substance to
15 anybody that Janay Freebery was the closest thing to a
16 wife and bitch that had you?

17 A. No, I did not.

18 Q. Did you say that to Janet Basara at the party?

19 A. No, never.

20 Q. You never said that?

21 A. No.

22 Q. So if a number of people --

23 A. I would never say that to Miss Basara. I don't
24 mean to interrupt. I want to clarify. I would never say



1 something like that to my boss.

2 You said, you asked me if I said it to Miss
3 Basara. I would never say something like that to my
4 boss.

5 Q. Did you tell Ms. Basara that you had given the
6 poinsettia to Janay because she was the closest thing to
7 a wife and bitch that you had?

8 A. No.

9 Q. And you didn't say that at the party at Janay
10 Freebery's house that year?

11 A. No.

12 Q. And I went through the whole list of people here
13 at the beginning of the deposition that you are aware of,
14 Janay Freebery, Janet Basara, Frank Rumford. If any of
15 those people say that you made that comment you are
16 saying that they are not telling the truth?

17 A. I do not recall ever making a comment such as
18 that. I know I never would make a comment like to Miss
19 Basara, my boss.

20 Q. What about the others?

21 A. I don't believe I ever made that comment. I
22 don't believe I ever said that.

23 Q. Well, if they all testify that you did, are you
24 saying they are not telling the truth?



1 MR. WILSON: Object to the form.

2 A. I do not recall ever making that comment. I do
3 not believe I ever said that.

4 Q. Did you have a lot to drink at the Christmas
5 party --

6 A. No, I did not.

7 Q. Let me finish the question.

8 A. I'm sorry.

9 Q. -- at Miss Freebery's house?

10 A. No, I did not.

11 Q. Were you one of the last people to leave?

12 A. I don't think. I don't think so. I might have
13 been.

14 Q. And you are saying at no point did you say in
15 words or substance to Janet Basara that Janay Freebery
16 was the closest thing to a wife and bitch that you had --

17 MR. WILSON: Object to the form.

18 Q. -- so you are giving her the poinsettia?

19 MR. WILSON: He has answered the question
20 numerous time.

21 A. I said I would never have said it to Miss Basara.

22 Q. So you deny that?

23 A. Yes.

24 Q. You likewise deny saying that in the presence of



1 Cindy Falgowski?

2 A. I don't believe I ever said that. I don't
3 remember ever making remarks like that.

4 Q. Do you deny saying that in the presence of
5 Rebecca Perse?

6 A. Again, the same thing.

7 Q. Do you remember Rebecca Perse telling you at any
8 point that you had made inappropriate comments in her
9 presence?

10 A. No, she never did.

11 Q. You don't remember that either?

12 A. No, she never did.

13 Q. You are saying it didn't happen?

14 A. No. No one has ever said I made inappropriate
15 comments.

16 Q. Do you remember Sean Furilla, saying in front of
17 him in words or substance that Janay Freebery is the
18 closest thing to a wife or bitch that you have?

19 A. No, I do not.

20 Q. Do you remember him saying to you that that was
21 an inappropriate comment?

22 A. He never made a comment, again, that that was
23 inappropriate. No one has ever said I made an
24 inappropriate comment.



1 Q. Well, you were written up for making
2 inappropriate comments, correct?

3 A. That was because of the accusation made by Miss
4 Freebery at the meeting. I'm sorry. I meant no one has
5 ever made that accusation other than Miss Freebery at
6 that meeting.

7 Q. All right. Did you ever make comments to Miss
8 Freebery about her dating any of her boyfriends?

9 A. Made comments?

10 Q. Did you ever question her about it or make any
11 reference to any of her dates?

12 A. No.

13 Q. Never?

14 A. I do not believe so.

15 Q. And you know Bruce Hannah, you said?

16 A. Yes.

17 Q. Did you ever make any comment to him, quote,
18 congratulating him on getting Miss Freebery pregnant?

19 A. No, I did not.

20 Q. That's a lie too?

21 A. I never made that comments.

22 Q. And you never asked Miss Freebery about her
23 dating of Mr. Hannah?

24 A. No.



Richard Wilcoxon

21

1 Q. You never asked --

2 A. I may have asked her, "How is it going," or
3 whatever. Casual conversation. I never asked her --

4 Q. Did you ever ask her if she had sex with him yet?

5 A. No.

6 Q. Did you ever ask her about dating someone else as
7 well as Mr. Hannah and whether or not she was teasing
8 them, or words to that effect?

9 A. No.

10 Q. Never made any such comments?

11 A. No.

12 Q. So anybody who says they heard you say that is
13 not telling the truth?

14 A. That's correct.

15 Q. You didn't record any of the conversations other
16 than the ones you described?

17 A. My conversations with Miss Basara were recorded,
18 so there is other conversation with Miss Basara
19 throughout the year that I had recorded.

20 Q. Do you remember what your first comments to Miss
21 Freebery were when you returned for the start of the
22 2003-2004 school year?

23 A. My first comments to her?

24 Q. Yes.



1 A. No.

2 Q. Do you remember asking her if she had sex with
3 Bruce Hannah yet?

4 A. No.

5 Q. You didn't say that?

6 A. No.

7 Q. Now, you were socializing with a group of
8 teachers called the Insubordinates; is that correct?

9 A. No.

10 Q. You weren't?

11 A. No. There is not a group of teachers that were
12 called that. We didn't call ourselves insubordinates.
13 There was a group of teachers I socialized with.

14 Q. You didn't call yourselves the Insubordinates?

15 A. No.

16 Q. Okay.

17 A. Only term I heard referred to is the Exiles.

18 Q. The Exiles?

19 A. That's the only term I ever heard it referred to.
20 And I didn't use that term. That was used by another
21 person who is a part of the group. I never referred to
22 it as the Insubordinates.

23 (Wilcoxon Deposition Exhibit 1 was marked
24 for identification.)



1 Q. I've handed you what has been marked as
2 Exhibit 1. Do you recognize that document?

3 A. I don't recognize it. It doesn't mean I didn't
4 get it.

5 Q. Well, it is an e-mail, correct?

6 A. Yes.

7 Q. You are one of the recipients, correct?

8 A. Yes.

9 Q. And can you read, it says, "Subject: Meeting -
10 Farewell," can you read the document after that?

11 A. Do you want me to read it out loud?

12 Q. Yes.

13 A. "The 'meeting' of the Insubordinates is being
14 advertised as starting around 6 p.m. on Tuesday due to
15 the schedule of one of the schedulers."

16 Q. Hold on one second. At the top it says addressed
17 to "Fellow Insubordinates," correct?

18 A. Yes.

19 Q. You are telling us you never heard that term
20 before?

21 A. I never referred to it and the people who I'm
22 close to in the group never referred to it. I mean,
23 there is one person in the group refers to it as the
24 Exiles. I never had a name for the group. It is just a



1 group of friends.

2 Q. And the people on the "to" line, are they the
3 group of friends you are referring to?

4 A. Yes.

5 Q. Includes Linda Filer?

6 A. Yes.

7 Q. Okay. Why don't you keep reading the e-mail?

8 A. "However, Fellow Insubordinates, in keeping with
9 our attitudes and behaviors, the meeting can begin
10 without him. We can perform such duties as begin
11 drinking, terrorizing the neighborhood, begin drinking,
12 writing names in snow" --

13 Q. Slow down.

14 A. "Write names in the snow, begin drinking" --

15 Q. Read slower, please.

16 A. "Begin drinking, eating munchies, and continue
17 drinking. I should have the refrigerator cleared out of
18 unnecessary items (such as my food) so that you can put
19 your beer supply on ice by 4:30 or so. We will just
20 beginning the honoring without him."

21 Q. Do you know who the person who is being referred
22 to for the "Special Meeting - Farewell" is?

23 A. No, I don't.

24 Q. Did you attend this farewell meeting?



Richard Wilcoxon

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1 A. I might have. I couldn't tell you, to be honest.

2 Q. Do you know who the message is from?

3 A. Yes, Marilyn, I can't think of her last name.

4 Q. And this was the group of people that you
5 socialized with at work at Skyline?

6 A. Some of them are, yes.

7 Q. Did you frequently go out for drinks after work?

8 A. About every other Friday.

9 Q. And was it one of those Friday meetings that
10 Linda Filer said to you that you should keep a book on
11 Janay Freebery?

12 A. I don't know if it was then or not. It was at a
13 time I was talking to Linda Filer about --

14 Q. You told me earlier it was at a bar, earlier in
15 this deposition. So you are correcting that now? You
16 are saying it wasn't at a bar?

17 A. I don't know where it was.

18 Q. So you don't remember where it was?

19 A. No.

20 Q. Could it have been at a bar?

21 A. It could have been. It very well could have
22 been.

23 Q. Who else was present when that conversation took
24 place?



1 A. Tom Karpinski.

2 Q. Who else?

3 A. I don't recall.

4 Q. Were there others present?

5 A. I don't recall. Those were the two that were
6 talking to me about it. There may have been others
7 around. Those were the two I was having the conversation
8 with.

9 Q. Tell me how it came up that Ms. Filer said you
10 should start keeping a book on Ms. Freebery.

11 A. I had said something about Ms. Freebery leaving
12 the class and me having to watch the whole group and that
13 I was concerned about the large numbers, and I don't know
14 Miss Freebery's students as well as my students as far as
15 disciplining and such issues, and Miss Filer said, "Maybe
16 you should start writing down when she leaves."

17 Q. Did she say why?

18 A. She felt that if something happened to the kids,
19 the students while Miss Freebery was out, that could help
20 protect me in showing that Miss Freebery was not present
21 to watch her kids.

22 Q. I thought there was some conversation about you
23 hearing that Miss Freebery said you were difficult to
24 work with?



1 A. That happened much later. The initial
2 conversation I had with Miss Filer about, about the log,
3 the first time she brought it up was actually my first
4 year at Skyline.

5 Q. When was that?

6 A. 2002-2003, so it would have been that spring.

7 Q. Do you remember the month?

8 A. It would have been late in the spring.

9 Q. Did you start keeping a log then?

10 A. No, I did not. I felt Miss Freebery was just
11 getting back into teaching after being out, and she was
12 learning to cope with being a new mother and a single
13 mother, and I had to wait and see how next year went.

14 Q. And did you have anymore conversations between
15 that conversation with Ms. Filer and when you had another
16 conversation with her in the fall?

17 A. I probably had a number of conversations with
18 her.

19 Q. About keeping the so-called log?

20 A. Not about keeping the log, no.

21 Q. Any conversation with Ms. Filer from that time
22 until the following, beginning of the following school
23 year concerning Janay Freebery?

24 A. I don't believe so.



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1 Q. Tell me about the conversations in the second
2 school year at Skyline when Ms. Filer suggested that you
3 keep the log on Ms. Freebery.

4 A. She came to me and said that she was just getting
5 out of a meeting. I don't know what meeting it was for.
6 I don't remember at this time. And Miss Freebery made a
7 comment to the whole group that I was difficult to work
8 with, and that Mr. Rumford was part of that group as
9 well.

10 And so at that point I thought, I said,
11 "Well, if I'm difficult to work with, I'm covering her
12 classes when she is late, I'm covering when she is out,
13 how can I be considered difficult to work with." She
14 said, "That's why you should keep the log." And so,
15 again, that's when I did start keeping the log.

16 Q. Did you go to Ms. Freebery and tell her you heard
17 she made these comments?

18 A. No, I did not.

19 Q. So you just decided to secretly keep the log?

20 MR. WILSON: Object to the form.

21 A. Yes.

22 Q. And that log was for your own use, correct? It
23 wasn't something you were taking to the district? It was
24 for your own protection, as you said?



1 A. Well, I would take it to the district if things
2 happened. As Miss Freebery complained to Mr. Rumford, if
3 it went to my supervisors, her and Miss Basara, and my
4 job became in jeopardy because she said I was difficult
5 to work with or something happened to the kids and I was
6 poised in that situation, then it would be something I
7 would share with the district.

8 Q. Only in those circumstances would you bring it to
9 somebody's attention in the district?

10 A. Yes.

11 Q. Did you tell somebody, any of the administrators
12 or principals that you were keeping it so you would have
13 leverage?

14 A. No.

15 Q. You never made that kind of remark either?

16 A. No.

17 Q. When was it you started keeping the log?

18 A. In November.

19 Q. Of what year?

20 A. I believe it was 2003. Yes, 2003.

21 Q. So how long was the conversation, how long before
22 that was the conversation with Ms. Filer at the bar where
23 she suggested you start taking, keeping this log?

24 A. It was the previous spring, so I guess six



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1 months. I don't know. The spring.

2 Q. How long was the second conversation in that year
3 where she told you, Ms. Filer told you that Ms. Freebery
4 said you were difficult to work with? What was the time
5 frame between that and when you started keeping a log?

6 A. Maybe a week.

7 Q. Did you tape any conversations with April at the
8 school prior to December 17, 2003?

9 A. No.

10 (Wilcoxon Deposition Exhibit 2 was marked
11 for identification.)

12 MR. WILSON: Was this Wilcoxon 1? Was this
13 entered as an exhibit?

14 MR. WILLOUGHBY: Yes.

15 BY MR. WILLOUGHBY:

16 Q. Let me ask you to look at Exhibit 2 and ask you
17 if you can identify that.

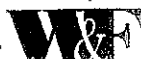
18 A. Yes, that's the log I kept.

19 Q. Now, was this on a notebook, basically?

20 A. A note pad, yes.

21 Q. A note pad. And tell me what your procedure was
22 in creating this log, what you did in terms of recording
23 what Ms. Freebery was doing.

24 A. What was my procedure?



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1 Q. Right. Did you write in it every day? Did you
2 go back and recreate it all at once? Did you --

3 A. Above where the line is --

4 MR. WILSON: Wait until he is done.

5 A. I'm sorry. I apologize.

6 Q. Go ahead. You said "above where the line is"?

7 A. I went back. That's why I said it was
8 approximately September 8th. I don't know the exact date
9 of that. I went back and recreated it.

10 Q. Okay. So what line are you referring to?

11 A. There is a pen-drawn line right above November
12 13th.

13 Q. All right. So basically the top half of the page
14 on the first page --

15 A. Yes.

16 Q. -- which is C00759, for Bates number, you
17 recreated that?

18 A. Yes.

19 Q. And then below that you were keeping things
20 contemporaneously?

21 A. Yes.

22 Q. Looking at the first entry below the line of
23 November 13, that looks like that was squeezed in there
24 afterwards. Is that correct?



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1 A. It does look like it was squeezed in.

2 Q. Did you write it afterwards?

3 A. I do not believe so. It may be something where I
4 started on the 14th, was when I started keeping it, and I
5 thought of the 13th, I wrote down so --

6 MR. WILLOUGHBY: Do you have the original
7 here?

8 MR. WILSON: No, this isn't the original.
9 It is a better copy than we produced, though.

10 BY MR. WILLOUGHBY:

11 Q. So then after you started keeping the log did you
12 make entries every day?

13 A. Just when I saw things.

14 Q. Did you make it the same day?

15 A. Yes.

16 Q. As whatever you observed something you thought
17 was something that should be recorded in the log, you
18 wrote it down that day?

19 A. I believe so, yes.

20 Q. Did you do that at the end of the day? Did you
21 do it in a working period? When did you do it?

22 A. Probably different times of the day.

23 Q. Did you have a regular process you used to keep
24 these records?



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1 A. No, I did not. Sometimes I had the log with me
2 so it was something -- in my plan book, it was something
3 I could easily jot down. Sometimes it was left in my
4 locker room, I had to go back at the end of the day.

5 Q. Did you leave it in your office, in the locker
6 room?

7 A. Yes.

8 Q. Did you lock it up any place?

9 A. It was locked inside the office. The door to the
10 office is locked.

11 Q. Did you put it in a cabinet any place and lock it
12 up?

13 A. No. I had no cabinets I had keys to.

14 Q. Did you take it home with you at any point?

15 A. I probably did, inside my grade book. I probably
16 walked out with the grade book as well.

17 Q. Did other people have access to your office,
18 substitutes, administrators, etcetera?

19 A. Substitutes did not. Administrators have keys to
20 everybody's office.

21 Q. If a substitute came in, they wouldn't have
22 access to the office?

23 A. No, they wouldn't.

24 Q. How were they going to get lesson plans, things



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1 like that, to fill in when you were out?

2 A. When I was out, if I was out sick there is -- am
3 I talking too fast for you?

4 When I was out, there was emergency plans
5 kept in the main office for those times. If I knew I was
6 going to be out I left lesson plans in my mailbox.

7 Q. Your mailbox in the office?

8 A. Yes.

9 Q. Tell me what the protocol was at Skyline for
10 having emergency plans available in the event that a
11 teacher was out unexpectedly due to illness or otherwise.

12 A. We left three days' emergency lesson plans in a
13 file cabinet in the main office. We turned them in to a
14 secretary to check our names off and then she put them in
15 the file cabinets for us.

16 Q. And that was a requirement of all teachers?

17 A. Yes.

18 Q. And what is a bell schedule?

19 A. Bell schedule is when the classes are dismissed
20 and the next class will begin.

21 Q. Were you supposed to keep that available for a
22 substitute as well?

23 A. It is part of the emergency lesson plans.

24 Q. So that was part of what was supposed to be in



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1 the file with the lesson plans?

2 A. Yes.

3 Q. Now, those lesson plans when you were at Skyline,
4 they were basically copies of plans that Mr. Rumford had
5 done, correct?

6 A. No, that's not correct.

7 Q. Did you write your own plans?

8 A. Yes.

9 Q. You are saying the plans that were on file were
10 plans you wrote yourself?

11 A. Yes.

12 Q. So you didn't get a notebook --

13 A. I -- oh, yes, for emergency plans, yes, they were
14 my writing.

15 Q. Did you get a notebook from Mr. Rumford with his
16 lesson plan book when you went to work at Skyline?

17 A. Not for emergency plans.

18 Q. Okay. Well, tell me about that notebook first.

19 A. When I arrived at Skyline they were about ready
20 to start health lessons, because I didn't start until
21 October. Mr. Rumford gave me his lesson plan books and
22 said, "These are the lessons we use for health. All the
23 work sheets are locked in the cabinet inside the health
24 room. This is the key."



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1 Q. And did you use that as, basically, your lesson
2 plans for the two years you were at Skyline?

3 A. For health we team taught, so all lesson plans
4 were used by both Miss Freebery and myself, or in that
5 case it was the long-term sub, who I do not remember her
6 name.

7 Q. After you stopped teaching with Ms. Freebery did
8 you continue to use those plans?

9 A. Yes, I did.

10 Q. Mr. Rumford's plans?

11 A. Yes.

12 Q. Now, you said you had other emergency plans that
13 you wrote?

14 A. Emergency plans were separate from lesson plans.

15 Q. And tell me about what the difference is.

16 A. Emergency plans are locked on file and they are
17 only to be used when you are out. The lesson plans are
18 lesson plans we use every day of teaching. Every day we
19 should have a lesson plan.

20 Q. Well, were the emergency plans to tell the
21 substitute what to teach?

22 A. Yes.

23 Q. And are you saying you wrote those yourself?

24 A. Yes.



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1 Q. And you gave them to the secretary?

2 A. Secretary checked off everybody's name as they
3 turned them in. The office kept a record of that.

4 Q. Were there any other plans that you kept, you
5 gave the office for emergency uses in addition to those
6 ones you described?

7 A. When I got written up and the letter said that my
8 emergency lesson plans did not contain a bell schedule or
9 class list, I asked to see my emergency lesson plans to
10 show them that it did contain those things, and they told
11 me they no longer could find them, so I had to write new
12 emergency plans.

13 Q. Did they tell you that they couldn't find them or
14 they weren't there?

15 A. They told me that they no longer could find them.

16 Q. Who told you that?

17 A. Miss Basara.

18 Q. When did she tell you that?

19 A. When I got written up, the meeting. I think it
20 was January 22nd. Again, I don't know the exact date.

21 Q. Did you record that conversation?

22 A. Yes, I did.

23 Q. And you didn't tell her you were recording it?

24 A. That's correct.



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1 Q. All right. Let's go back to your log here.

2 Let's start at the top line, and tell me what your log
3 says here. It says, "Log about Janay."

4 A. Yes. She inappropriately attacked Jahlil Aleil
5 for inappropriate --

6 Q. Hold it. Slow down. It says, "Log about Janay,"
7 parens. Read after that.

8 A. Oh, at the top. I apologize. "Advised to keep
9 after Janay made comments saying I was difficult to work
10 with."

11 Q. So that was the reason you kept it, because she
12 had said you were difficult to work with?

13 A. Yes.

14 Q. Then it says "School year 2003-04"?

15 A. Yes.

16 Q. Read what it says under that beginning "In
17 September."

18 A. Again, it says approximately the 8th, "Janay was
19 so late to school she missed her 1st 2 classes, 1st
20 planning period and half of the 3rd class."

21 Q. Slow down.

22 A. I apologize. "She never called out so I was
23 alone with the 1st two classes, the office called a sub
24 in for her. When she arrived, she threw the sub out and



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1 complained to the office that she should not be charged a
2 day since she did not call out."

3 Q. Did you ever talk with Ms. Freebery about that
4 incident?

5 A. No.

6 Q. What is the next entry?

7 A. "Mid-September - Janay was late and missed her
8 1st class. Her girls stayed in the locker room
9 unsupervised. Janay arrived the start of her 2nd class."

10 Q. And you don't know what date that was?

11 A. No, I don't. I was outside with my kids, and a
12 girl came outside and said, "What are you doing?" And I
13 said, "We are finishing up soccer. Why aren't you with
14 your class?" And she said, "Miss Freebery isn't there."
15 And I said, "You need to go up to the office and let the
16 office know."

17 Q. You don't remember the date?

18 A. No, I don't.

19 Q. Did you ever have a conversation with Miss
20 Freebery about that?

21 A. No, I did not. I don't think.

22 Q. Prior to the December 17 conversation with Ms.
23 Basara, did you ever tell her about these incidents?

24 A. No, I did not.



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1 Q. On the left-hand side it says "General"?

2 A. Yes.

3 Q. And read to me what that says.

4 A. "Bruce in class almost daily. Leaves often
5 without signing out. Late" --

6 Q. Is that referring to Ms. Freebery?

7 A. Yes. All this is referring to Miss Freebery.

8 "Late daily. Did not pick student leaders
9 until early November saying 'I have too much to do to
10 worry about that.'

11 "Left intramurals to pick up daughter and
12 then return. Paid for a whole time," and put a question
13 mark because I don't know.

14 Q. So these were things you were recreating --

15 A. Yes. I am sorry.

16 Q. -- that you thought Ms. Freebery had done wrong,
17 that you could use in the event you got in trouble?

18 A. I was writing down to remember them in case the
19 situation arose, yes.

20 Q. Now, going below the line, this is where you are
21 now keeping it contemporaneously, correct?

22 A. Mm-hmm, yes.

23 Q. Do you have the original of this document some
24 place?



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1 A. Yes.

2 Q. And who has it?

3 MR. WILSON: I do.

4 MR. WILLOUGHBY: You don't have it with you?

5 MR. WILSON: No.

6 MR. WILLOUGHBY: I would like to see the
7 original at some point.

8 MR. WILSON: Okay.

9 BY MR. WILLOUGHBY:

10 Q. This is a photocopy?

11 A. Yes.

12 Q. Are the writings in different color ink on the
13 original? Different color pens used?

14 A. I couldn't tell you. Probably, but I couldn't
15 tell you for sure.

16 Q. When was the last time you looked at it before
17 today?

18 A. I haven't looked at it in a long time.

19 Q. Starting with November 13, what does that say?

20 A. "November 13 - Verbally attacked Jahlil Akil for
21 inappropriate question."

22 Q. And what does that mean? What is that referring
23 to?

24 A. I can't remember the exact details other than



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1 Jahlil probably asking an inappropriate question, and I
2 felt Miss Freebery was overly harsh in her response.

3 Q. Did you tell Ms. Freebery that?

4 A. I don't think so.

5 Q. Now, this was your second year at Skyline,
6 correct?

7 A. Yes.

8 Q. And how long had you been teaching at that point?

9 A. Overall?

10 Q. Yes.

11 A. I had spent three years at Lake Forest School
12 District and up until the October 4, I came to Skyline.
13 I was at Colonial? Was it Colonial? George Reed Middle
14 School.

15 Q. So how many years is that?

16 A. Up to this point?

17 Q. Yes.

18 A. That was my fifth year.

19 Q. How long had Ms. Freebery been teaching?

20 A. I don't know. I believe nine.

21 Q. And she was tenured?

22 A. Yes.

23 Q. And she had been teaching that class for a number
24 of years with Mr. Rumford?



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1 A. Yes, that's correct.

2 Q. All right. Let's go back. So November 14 says
3 what?

4 A. "Left a health class 20 minutes early saying she
5 'needed to work on her master's thesis,' leaving me with
6 all the kids."

7 Q. What did you say when that happened? Did you say
8 anything to her about that? Did you have a conversation?

9 A. I don't recall.

10 Q. So you are saying she just told you she was
11 leaving and you didn't agree to continue with the class?

12 A. Well, obviously, I was going to continue with the
13 class.

14 Q. Did you agree that she could leave early and you
15 would cover the class?

16 A. I may have said that -- I don't recall.

17 Q. You don't recall?

18 A. I may have said that, I don't recall.

19 Q. But you wrote it down here as something she did
20 inappropriately?

21 A. Yes.

22 Q. Did you tell her you thought it was
23 inappropriate?

24 A. I don't think so.



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1 Q. Okay. November 17, what does that say?

2 A. "Came into the In-service 15 minutes late."

3 Q. What is that next to it in parens?

4 A. It says "tally (15)."

5 Q. What does that mean?

6 A. I started keeping a tally of how late she was.

7 Q. So you started keeping a record of how many
8 minutes late she was?

9 A. Yes, that's correct.

10 Q. And did you tell Ms. Freebery that she was late
11 that day?

12 A. I don't know if I told her that day, no.

13 Q. Did you tell Ms. Basara about any of these
14 conversations prior to the December 17 meeting?

15 A. No, I did not.

16 Q. All right. What does the November 19 entry say?

17 A. "Left before our last class. Started to go to
18 bathroom. Did not return until 2:25. Said she was
19 talking to Becky Perse in the hall."

20 Q. Did you mention to Ms. Freebery you thought there
21 was something inappropriate about this?

22 A. I'm sure I did.

23 Q. At the time?

24 A. Yes.



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1 Q. What do you remember saying?

2 A. I could not tell you word for word. I'm sure I
3 said something about, where were you, it shouldn't take
4 that long.

5 Q. Do you remember that or are you saying you are
6 sure?

7 A. I'm sure I talked to her about it. I do not
8 remember exactly what I would have said.

9 Q. Well, do you remember, do you have a conscious
10 recollection of saying something?

11 A. Yes.

12 Q. And what is --

13 A. I believe I did.

14 Q. Well, that's a different thing, whether you have
15 a conscious recollection or you believe you would have.
16 I'm asking if you have a conscious recollection of saying
17 something.

18 A. No, I don't.

19 Q. So you think you would have, but you don't really
20 remember?

21 A. Correct.

22 Q. Let's go to the next entry, November 24.

23 A. "Late - arrived at 8:05. Missing student leaders
24 and volleyball sign-ups."



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1 Q. What is in parens there?

2 A. "50."

3 Q. That's what you are saying, she was 50 minutes
4 late?

5 A. Added with the 15 minutes previously. I kept a
6 running tally.

7 Q. So what you are doing here is you are adding the
8 total from the prior days --

9 A. Yes.

10 Q. -- to get a total running tally --

11 A. Yes.

12 Q. -- of how many minutes late you think she was?

13 A. Yes.

14 Q. So your running tally at that point was 50
15 minutes?

16 A. Yes.

17 Q. All right. What is the next entry?

18 A. "Bruce Hannah came in during 1st class, at
19 breakfast in front of kids. Yelled at kids while TV was
20 being hooked up. She was demeaning them (witnessed by
21 Mike Ruth."

22 Q. Mike who?

23 A. Ruth.

24 Q. Who is he?



1 A. He was another teacher within the building. I
2 was watching his homeroom while he was hooking up AV in
3 the gymnasium.

4 Q. Were you present when this happened?

5 A. No, I was not.

6 Q. How did you find out about this alleged incident?

7 A. When Mr. Ruth came back to his homeroom, so I
8 could go back to the gymnasium, he mentioned it.

9 Q. So you have no firsthand knowledge of it?

10 A. No, I do not.

11 Q. Now, it looks like something is crossed out. It
12 is beneath Bruce Hannah. It says "left building during"
13 something? What does that say?

14 A. "Left building during" -- I don't know.

15 Q. Is that a different entry you were going to make
16 but you crossed out?

17 A. I think I probably said, "left building during
18 planning period," would be my guess, if I said that.

19 Q. You don't know what you were --

20 A. I don't know for sure, no. I'm making a guess.
21 If you are asking me what I think I wrote, that's what I
22 think.

23 Q. And then you crossed it out?

24 A. The reason I say that is because I look on the



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1 next page, it says, "Left building to go to the bank
2 during planning," on the top of the next page. I'm
3 thinking when I wrote this down, the Bruce situation
4 happened earlier, and left building was later that same
5 day.

6 Q. So you crossed out that entry you started to make
7 so you could keep the entries in order?

8 A. Yes.

9 Q. Let's go to the next page, which is Bates
10 numbered C00760. And start at the top of the page, tell
11 me the date and what the entries are there.

12 A. Says "November 24th continued. Left building to
13 go to the bank during planning (did not sign out) did not
14 return until 10:45 (22 minutes after class started.)"

15 Q. Is your running total in here somewhere?

16 A. I don't see it on that.

17 Q. Did you say anything to Ms. Freebery about that?

18 A. I do not recall.

19 Q. Is there any reason why she couldn't leave the
20 building during her planning period?

21 A. No.

22 Q. Didn't you leave the building frequently during
23 your planning period?

24 A. Yes.



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1 Q. But you thought that was worthy of an entry?

2 A. School policy was always to sign out. I always
3 signed out when I left.

4 Q. So the concern then you had was that she didn't
5 sign out?

6 A. And that she was late returning, yes.

7 Q. So now how do you know she didn't sign out?

8 A. There is a sign-in book in the office.

9 Q. Did you go check it?

10 A. I probably did. Or maybe I left during a
11 planning period and signed out myself and came back.

12 Q. Do you remember?

13 A. I do not remember.

14 Q. So you are speculating as to how you know?

15 A. It would be one of those two ways, yes.

16 Q. So you went to look at the sign-out book in the
17 office?

18 A. Yes.

19 Q. All right. What is the next entry below that?

20 A. "Left class at 1:15 to call in after-busses, did
21 not return until 1:32."

22 Q. What was wrong with that?

23 A. Missing the middle of class. Her calling the bus
24 is an extra duty, with extra pay, I felt should not be



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1 done during class time, could be done at planning periods
2 or other things.

3 Q. Did you tell her that?

4 A. No, I did not.

5 Q. Next entry?

6 A. "Arrived at 6:22 for choice open house (teachers
7 were supposed to arrive at 6:00 p.m.) leaving me to set
8 up everything.

9 Q. What did you have to set up?

10 A. We had students come in and play volleyball
11 games. I set the volleyball nets. I had to get the
12 jerseys for the students. I had to get the students
13 organized.

14 Q. Did you tell Ms. Freebery that you believe that
15 what she had done was inappropriate?

16 A. I do not recall.

17 Q. What is the next entry?

18 A. "Spent 30 plus minutes of choice open house
19 talking to a former student - ignoring parents and others
20 in the gym.

21 Q. Do you know who the former student was?

22 A. I have no clue.

23 Q. And do you think it was inappropriate for her to
24 talk to a former student?

